

**REMARKS**

Reconsideration of the application is respectfully requested.

**I. Status of the Claims**

Claims 1 - 19 are currently pending in the application.

**II. Rejections Under 35 U.S.C. § 103**

The Examiner has rejected claims 1-19 under 35 U.S.C. 103(a) as being unpatentable over *Maynard* (U.S. 5,385,539) in view of *Canpolat et al.* (U.S. 6,660,995) either alone or in combination with at least one of *Hahn et al.* (U.S. 5,838,429), *Burbank et al.* (U.S. 6,582,385), *Mould* (U.S. 4,082,461), *Heinemann et al.* (U.S. 6,529,184) or *Hunley et al.* (U.S. 6,554,788).

The Examiner concedes that *Maynard* fails to disclose or suggest that the apparatus comprises “a light emission device and a single light reception device in optical connection with one another.” Further, *Maynard* teaches a hematocrit sensor that **requires** two light reception devices. If one of the two light reception devices is taken out from the hematocrit sensor in *Maynard*, the invention in *Maynard* will not function as intended.

Additionally, the Examiner contends that *Canpolat* can be cited to supplement *Maynard*’s deficiency. *Canpolat* discloses an apparatus and method for using a single probe to introduce and collect light from a sample. In this regard, *Canpolat* describes that “the oscillation frequency increases with particle size...and that knowing the number of oscillations, one can determine the particle size. Furthermore, as discussed in greater detail below, particle size analysis is generally independent of the particle concentration” (*Canpolat*, column 3, lines 33-40).

In contrast, claim 1 includes the element of “a sensor connected to said blood circuit and configured to measure **hematocrit values**.” Similarly, claim 14 recites a method comprising

**“determining a light absorption received by said single light reception device; and calculating hematocrit values based on a strength of said light absorption determined by said determining.”**

Thus, while *Canpolat* records the oscillation frequency to obtain particle size, and collects data independent of particle concentration, the claims recite a device and method to measure blood concentration.

*Canpolat* states that “absorption has very little effect on particle size analysis” (*Canpolat*, column 3, lines 39-40). Thus, *Canpolat* teaches away from having a single light receiver used to collect data on absorption. *Canpolat*’s sensor cannot replace Maynard’s since there is no teaching or suggestion that a single light recessor will function for Maynard’s intended purpose. Conversely, the present invention purposely aims at exploiting the light absorption characteristics of each component in the blood.

Applicants therefore respectfully request reconsideration of the finality of the Office Action and that the rejection of claims 1-19 under 35 U.S.C. § 103(a) be withdrawn.

**CONCLUSION**

Applicants believe the pending application is in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

The Examiner is respectfully requested to contact the undersigned at the telephone number indicated below if the Examiner believes any issue can be resolved through either a Supplemental Response or an Examiner's Amendment.

Dated: August 20, 2007

Respectfully submitted

By   
Louis J. DelJudice  
Registration No.: 47,522  
DARBY & DARBY P.C.  
P.O. Box 5257  
New York, New York 10150-5257  
(212) 527-7700  
(212) 527-7701 (Fax)  
Attorneys/Agents For Applicant